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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 09/874,910  | 06/05/2001  | Todd Ell             | A773.12-0050        | 3598             |
| 164   | 7590        | 12/29/2004           | EXAMINER            |                  |
| KINNEY & LANGE, P.A.<br>THE KINNEY & LANGE BUILDING<br>312 SOUTH THIRD STREET<br>MINNEAPOLIS, MN 55415-1002 |             |                      |                     | DIXON, THOMAS A  |
| ART UNIT  |             | PAPER NUMBER         |                     |                  |
|   |             | 3629                 |                     |                  |

DATE MAILED: 12/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.



## ***Office Action Summary***

| Application No. | Applicant(s) |
|-----------------|--------------|
| 09/874,910      | ELL, TODD    |
| Examiner        | Art Unit     |
| Thomas A. Dixon | 3629         |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 11 December 2002.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

4)  Claim(s) 1-26 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5)  Claim(s) \_\_\_\_\_ is/are allowed.  
6)  Claim(s) 1,3,5,7,9,11,13-26 is/are rejected.  
7)  Claim(s) 2,4,6,8,10 and 12 is/are objected to.  
8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 12/01  
4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_ .  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other:

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

1. Claims 1- are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the limitation "each cell in the grid" in line 4. There is insufficient antecedent basis for this limitation in the claim. The previous reference is to "grids" and no "cells" are mentioned.

### ***Claim Rejections - 35 USC § 101***

2. Claim 25, 26 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The claims, as presently claimed and best understood were considered in light of the new "Examination Guidelines for Computer-Related Inventions" and were found to be non-statutory. Discussion of the analysis of the claims under the guidelines follows.

As per claim 25, the preamble recites "a controller application map for applying agricultural products to a field" however, does not recite that the application map is encoded or recorded on a physical medium readable by a computer.

As per claim 26, the preamble recites "a map data translator" however, does not recite that the translator is encoded or recorded on a physical medium readable by a computer.

Thus, the claims are directed to functionally descriptive material that is not functionally or structurally interrelated to the medium. Data structures not claimed as embodied in computer readable media (defined as “a collective word for the physical material, such as paper, disk, and tape, used for storing computer-based information”, Microsoft Press, Computer Dictionary, Second Edition, © 1994) are descriptive material per se and are not statutory because they are neither physical “things” nor statutory processes. Such claimed data structures do not define any structural and functional interrelationships between the data structure. See MPEP 2106(IV)(B)(1)(a).

Also, the claim does not recite that the computer program product comprises a computer readable medium having computer readable program instructions or code embodied thereon and configured to control a computer to perform specific functional steps. The lack of recitation of any specific computer or computer implemented device results in a claim that recites functionally descriptive material (defined as “data structures and computer programs with impart functionality when encoded on a computer readable medium” by the Computer-Implemented Invention Guidelines) without any interrelationships between the data structure and other aspects of the invention that would permit the data structure’s functionality to be realized.

***Claim Interpretation***

3. Claims directed to an Apparatus must be distinguished from the prior art in terms of structure rather than function, *In re Danly* 263 F.2d 844, 847, 120 USPQ 582, 531 (CCPA 1959).

A claim containing a “recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus” if the prior art apparatus teaches all the structural limitations of the claim. *Ex parte Masham*, 2 USPQ2d 1657 (bd Pat. App. & Inter. 1987). Thus the structural limitations of claim 13, including an input device and a processor are disclosed in Hauwille et al (6,236,907) as described herein. Also as described the limitations of the claim do not distinguish the claimed apparatus from the prior art.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4 Claims 13-24 are rejected under 35 U.S.C. 102(e) as being anticipated by Hauwille et al (6,236,907).

As per claim 13.

Hauwille et al ('907) discloses:

an device for inputting application maps, see figure 2 (106);

a data processor for converting application maps into a format recognized by an application machine, see (108).

The other limitations of the claim are seen to be non-functional descriptive material and intended use and do not distinguish the claimed apparatus from the prior art.

As per Claims 14-24.

The other limitations of these claims are seen to be non-functional descriptive material and intended use and do not distinguish the claimed apparatus from the prior art.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1, 5, 7, 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hauwiller et al (6,236,907) in view of Yaegashi et al (6,832,318).

As per claim 1.

Hauwiller et al ('907) discloses:

inputting application maps, where the maps are broken into grids that represent a field and each cell of the grid contains a blend of agricultural products to apply to the field, where the blend of products for each cell is in a geographically tagged file, see figure 2 (106 and 108);

Hauwiller et al ('907) does not disclose demo maps or converting the demo application maps to a format recognized by an application machine based on a paid-for status of the map.

Yaegashi et al ('318) teaches a degraded preview of a product with limited features and converting to a full version of the product when a payment is made, see column 7, lines 1-19 for the benefit of insuring that the distributor receives payment for use of the product.

Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to allow users to preview application maps and convert the previewed maps to usable application maps upon payment.

As per Claim 5

Hauwiller et al ('907) further discloses data tags, see figure 15 (1506).

As per Claim 7.

Hauwiller et al ('907) does not disclose the data tags contain paid-for status, this limitation is seen to be non-functional descriptive material and will not distinguish the claims over the prior art.

As per Claim 9.

Hauwiller et al ('907) does not disclose the data tags contain an expiration date, this limitation is seen to be non-functional descriptive material and will not distinguish the claims over the prior art.

As per Claim 11.

Hauwiller et al ('907) does not disclose the data tags contain a checksum, this limitation is seen to be non-functional descriptive material and will not distinguish the claims over the prior art.

6. Claims 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hauwiller et al (6,236,907) in view of Yaegashi et al (6,832,318) further in view of Johnson et al (6,553,336).

As per Claim 3.

Hauwiller et al ('907) does not disclose debiting from a deposit account.

Johnson et al ('336) teaches deposit accounts are old and well known, see Johnson et al ('336) for the benefit of guaranteeing payment.

Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to debit a deposit account as taught by Johnson et al in the invention of Hauwiller et al for the benefit of guaranteeing payment.

#### ***Allowable Subject Matter***

7. Claims 2, 4, 6, 8, 10, 12 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

As per Claim 2.

Hauwiller et al ('907) in view of Yaegashi et al ('318) further in view of Johnson et al ('336) does not disclose comparing gtiff ...to determine map-creation charges.

As per Claims 4, 6, 8.

Hauwiller et al ('907) in view of Yaegashi et al ('318) further in view of Johnson et al ('336) does not disclose updating the paid-for status of the demo applications based on map-creation charges.

As per Claim 10.

Hauwiller et al ('907) in view of Yaegashi et al ('318) further in view of Johnson et al ('336) does not disclose updating the expiration date of the demo applications based on the payment of map-creation charges.

As per Claim 12.

Hauwiller et al ('907) in view of Yaegashi et al ('318) further in view of Johnson et al ('336) does not disclose updating the checksum of the demo applications based on map-creation charges.

***Prior Art Made of Record***

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Cohen (6,233,567) discloses expiration dates, but does not disclose all the limitations of the claims.

Garrot Jr (6,549,828) discloses checksums for data integrity, but does not disclose all the limitations of the claims.

Hale et al (WO 98/21931) is the closest foreign art that disclose geo-referenced digital application maps, but does not disclose all the limitations of the claims.

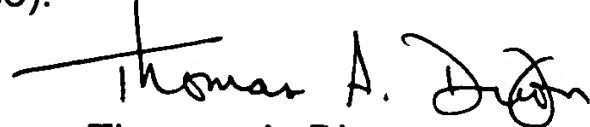
Remington is the closest NPL that discloses demo maps, but does not disclose all the limitations of the claims.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas A. Dixon whose telephone number is (703) 305-4645. The examiner can normally be reached on Monday - Thursday 6:30 - 4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on (703) 308-2702. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Thomas A. Dixon  
Primary Examiner  
Art Unit 3629

December 04